IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1847 OF 2006

Shri Ashok Nilambar Das ..Petitioner

Vs.

State of Maharashtra & Ors. ..Respondents

Mr.M.S.Adenwala for the petitioner

Mr.D.S.Mhaispurkar, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 28TH SEPTEMBER, 2006

P.C.:

1. Heard.

2. We have gone through the complaint filed by the petitioner before the Magistrate, verification recorded and the order of the Magistrate directing an enquiry under section 202 of the Cr.P.C. in response to which Sr.P.I. of Pydhonie Police Station, Mumbai has filed his report.

3. It appears that the learned Magistrate was

not satisfied with the report and on the application filed by the petitioner requesting that further investigation in the matter be handed over to EOW CB CID, Mumbai, passed an order to that effect. On receipt of such an intimation, the Sr.P.I. EOW CB CID, Mumbai informed the learned Magistrate that they cannot take further investigation in the matter on the direction of Additional Chief Metropolitan Magistrate and rightly so. We do not find that any case is made out on the basis of the report filed by the Sr.P.I. pursuant to which the learned Magistrate passed an order and sent the matter to EOW, CB, CID for investigation under section 173 (8) of the Cr.P.C. We therefore, find that the petitioner is not entitled for the relief sought for from this court. If the learned Addl. C.M.M. is not satisfied with the report submitted to him by the concerned Sr.P.I. he should call upon the complainant to prove his case by examining the witness and place on record, documents and materials in support of his complaint.

4. The learned counsel for the petitioner made

hue and cry over the fact that the petitioner complainant cannot have access to such documents as they are in custody of accused. We do not find that the Magistrate is so helpless in the matter. The complainant can very well apply to the Magistrate who can summon the accused to produce the document required for the purpose of tendering them as evidence by the petitioner and also get it examined at his costs. With these observations, we dismiss the petition.

(SHRI J.N. PATEL, J)

(SMT.ROSHAN DALVI, J)